APPENDIX A

IN THE COURT OF COMMON PLEAS

CASE No. 196206

(Caption Omitted)

Temporary Restraining Order

STATE OF OHIO }
SUMMIT COUNTY } ss

1. This cause came on to be heard on the petition Harry Anderson, Harold D. Vernon and W. A. Seiler, partners doing business as West Point Market, on their motion for a temporary restraining order herein, and the evidence.

2. On consideration thereof, the Court finds that the defendants have continuously since November 22nd., 1954, illegally picketed plaintiffs' place of business; that as a result thereof the plaintiffs have suffered property damage in the past and will continue in the future to suffer damage as the proximate result of the defendants' acts and conduct as shown by the evidence. Unless they are restrained by the Court. Said damages are so difficult of ascertainment as to amount that the plaintiffs have no adequate remedy at law.

3. The Court further finds that among the purposes of defendants for picketing plaintiffs' place of business is the purpose of coercing the plaintiffs into negotiating a contract with defendants.

4. Upon consideration thereof, the Court finds that said plaintiffs are entitled to a restraining order as hereinafter set forth.

5. It is therefore ordered, adjudged and decreed that defendant, Local Union No. 698, Retail Clerks Union affiliated with the American Federation of Labor, and defendant, Retail Clerks International Association, and each of them, is restrained and enjoined from:—

(1) Interfering or threatening to interfere, in any manner, with ingress and egress of anyone to and from the premises of the plaintiffs.

(2) Interfering in any manner with the delivery of commodities necessary to the operation of plaintiffs' business.

(3) Picketing at or near the approaches to plaintiff's place of business, either on Market Street or Hawkins Avenue.

6. This order shall be in force and effect until the hearing of this cause on its merits provided a bond in the amount of Five-Hundred Dollars ($500.00) is furnished by plaintiffs.

Exceptions allowed.

/s/ Stephen C. Colopy
Judge

Approved:
/s/ Davis and Lipps
Attorneys for Plaintiffs

Have seen—not approved. Object to word Illegalling (?) and non inclusion of word vald like dispute & legal strike.

/s/ Robert E. Shuff
Attorneys for Defendants

Filed, Court of Common Pleas, Summit County, December 14, 1954.
Filed, Court of Appeals, Summit County, August 23, 1955.
Filed, The Supreme Court of Ohio, June 20, 1956.

APPENDIX B

IN THE COURT OF COMMON PLEAS

CASE NO. 196206

HARRY ANDERSON, ET AL, *Plaintiffs*

v.

LOCAL UNION NO. 698, ETC., ET AL, *Defendants*

Journal Entry

STATE OF OHIO)
SUMMIT COUNTY) ss

1. This cause came on to be heard upon the pleadings, the evidence and the briefs of counsel, having been regularly assigned for trial, and thereupon counsel for the parties stipulated and agreed as follows:

> It is stipulated by and between counsel for plaintiffs and counsel for the defendants that in this hearing on the merits, on the application of the plaintiffs for a final injunction as prayed for in the petition, the evidence offered and introduced in the hearing on the application for a temporary injunction before Honorable Judge Colopy of this court heretofore may be offered and considered by the court as being all of the evidence offered by the parties hereto on the hearing on the merits, and that evidence will be transmitted to your Honor by a transcript of that testimony and the evidence.
>
> Each of the parties will pay one-half of the costs of the preparation of that transcript.

2. The court, upon the temporary hearing, found that among the purposes of the defendants for picketing plaintiffs' place of business was the purpose of coercing the plaintiffs into negotiating a contract with defendants.

3. The court finds upon the evidence that the temporary restraining order or temporary injunction is depositive of the matter now on hearing for permanent injunction on the ground of res adjudicata.

4. The court, therefore, further finds grounds for this proceeding in equity and that the defendants were acting illegally in picketing the plaintiffs' store and such picketing was done for coercive purposes, all to the plaintiffs' damage and the court finds that the temporary order should be made permanent.

5. Therefore, for the reasons foregoing and upon the evidence adduced as set forth in the transcript of the testimony and the evidence in the hearing on the application for a temporary injunction, the court finds that the temporary injunction should be made permanent.

6. It is, therefore, ordered, adjudged and decreed that defendant, Local Union No. 698, Retail Clerks Union affiliated with the American Federation of Labor, and defendant, Retail Clerks International Association, and each of them is permanently restrained and enjoined from:

(1) Interfering or threatening to interfere in any manner, with ingress and egress of anyone to and from the premises of the plaintiffs.

(2) Interfering in any manner with the delivery of commodities necessary to the operation of plaintiffs' business.

(3) Picketing at or near the approaches to plaintiffs' place of business, either on Market Street or Hawkins Avenue, Akron, Ohio.

Exceptions to defendants. Costs assessed at $ shall be paid by defendants.

Judge

Approved:

Attorney for Plaintiffs

Attorney for Defendants

APPENDIX C

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT

No. 4594

OPINION

Argued Apr. 25, 1956
Decided May 23, 1956

HARRY ANDERSON, ET AL., *Appellees*

v.

LOCAL UNION No. 698, RETAIL CLERKS' UNION, A.F.L., ET AL., *Appellants*

DAVIS & LIPPS
For Appellees.

ROBERT E. SHUFF
For Appellants.

Appeal on Questions of Law and Fact

STATE OF OHIO }
SUMMIT COUNTY } ss

HUNSICKER, J.

This is an appeal on questions of law and fact. The case was tried in this court on the transcript of testimony and the exhibit admitted in the Court of Common Pleas.

Harry Anderson, Harold D. Vernon and W. A. Seiler are partners doing business under the trade name of West Point Market, at 1711 West Market Street, Akron, Ohio. This market is a purely intrastate local business, and independent of any chain store or large corporate enterprise.

Twelve persons are employed by the market; three in the meat department and nine in the grocery department. Only the grocery clerks were members of a union, which

held a contract with the market. This contract expired on or about November 1, 1954.

In August, 1954, prior to the expiration of the union contract, one of the partners, Harold Vernon, told the employees of the grocery department that they did not wish to have a union store. At that time, he asked each of such employees individually, if he or she desired to leave the union, to sign a paper writing indicating he or she wished to withdraw from the union. Six members of the grocery department signed this paper, and three refused to sign. The three meat department employees were never members of any union, and they were not asked to sign or take part in these discussions.

On August 27, 1954, the market received a request in writing from the business manager of the Retail Clerks' Council that the local union wished "to enter into negotiations for amendments and changes in the collective bargaining agreement." Thereafter, the lawyers for the respective parties met, but no action toward a new contract was taken, since the market did not wish to continue as a union store.

The three union members continued to work at the market, even though no agreement was reached by the lawyers, and even though they were told that the market would not continue its union affiliation. None of the clerks personally, either the three in the union or those six who had withdrawn, made a demand on the market for any change in the wages paid, hours of work, or other conditions. None of the clerks voted for a strike. None of the clerks knew that a strike was being called until either the day when pickets appeared at the market or the night before the appearance of pickets. None of the clerks engaged in picketing. Each of the clerks who refused to sign the withdrawal paper appeared for work the morning when the pickets were at the market, and, seeing the pickets, each of them refused to cross the picket line.

A picket was placed at the front entrance to the store, and one at an alley through which the supplies were delivered to the rear of the market. These pickets, it is admitted, kept some customers and many deliveries of supplies from coming to the market. These supplies were halted by the picket holding up his hand to stop a delivery truck, talking with the driver, who then left without delivering his products. There was, however, some delivery of supplies to nearby places, which the market obtained by sending a truck to get such deliveries, and employees or partners of the market also got merchandise from wholesale houses by going direct to the wholesalers.

There is no dispute but that the effect of stopping the delivery of supplies caused great loss to the market.

The clerks who desired to remain in the union never personally have made a demand on the market for any change in the contract, and their agent, so far as the record shows, never asked for any specific changes in the contract. There was, of course, the demand for negotiations with the market and for an amendment to a contract which the market no longer desired to keep in force.

We do not have before us the contract between the union and the market, but it must be assumed that upon its expiration there was no longer a requirement that the employees be members of a union, and that the force and effect of the contract was at an end for all purposes. Certainly, at the expiration of the contract there was no requirement that the market be a union shop, and no requirement that the clerks be union clerks.

This action to enjoin the picketing of this place of business was filed, by the partners who owned the market, several weeks after the union placed its pickets near the store. The trial court granted a temporary order of injunction, and, at a later hearing of the case on its merits, the temporary injunction was made permanent.

There are recurring problems before the courts of this country concerning the right to picket. Each case presents a slightly different aspect of this question, which relates to the rights of employees, employers, and the general public. The pendulum which measures these rights has, during the last twenty years, swung in a wide arc. In the last analysis, however, this case must be determined upon the basis of the law of Ohio.

The case before us does not involve a business engaged in interstate commerce. It is a purely local neighborhood enterprise, in which a union, which once had a contract with a majority of the employees, no longer has such a contract. This is a controversy where the union, without a majority of the employees in its membership, seeks, by means of manners and by requests to suppliers of merchandise, to force the employer to bargain for the employment of union members. Is this unlawful conduct as defined in the case law of Ohio?

We think it is. The latest pronouncement by the Supreme Court of Ohio on the subject of picketing or bannering as an unlawful enterprise is found in the case of W. E. Anderson Sons Co. v. Local Union, etc., 156 O.S. 541. In that case, Judge Hart, who wrote the majority opinion, analyzed the important Federal cases and demonstrated how the trend of judicial thought changed from (prior to 1937) (1) no picketing, since "economic pressure applied by labor unions had been generally regarded by the state courts as prima facie torts unless a justifiable purpose was shown," (2) to the era of unlimited picketing, because to hinder such acts was an infringement of the right of free speech, (3) to the present period where the picketing may be enjoined if it is being conducted for an unlawful purpose.

This court, in the case of Fairlawn Meats, Inc., v. Amalgamated Meat Cutters and Butcher Workmen, etc., No. 4519, Summit County, decided on May 18, 1955, said:

"The case which pronounces the policy of the state of Ohio, with respect to organizational picketing, is Crosby v. Rath, 136 O.S. 352; and, while it was true that, in that case, there was much evidence of violence which accompanied the picketing, yet the court said, at page 355:

"'* * * The thing upon which the defendants are insisting is that the plaintiff discharge her employees unless they become members of one of the defendant unions. There is no reason or convincing authority sustaining the contention of the defendants that they have the right to engage in picketing or boycotting under such circumstances. That this must be the law is clearly indicated by the intolerable and unexplainable predicament in which an employer might well find himself if picketed by two or more hostile unions with each one insisting that the employer discharge his employees unless they become members of that particular union alone.'

"The latest pronouncement by the Supreme Court of Ohio on the subject of the right to picket for organizational purposes is found in the case of W. E. Anderson Sons Co. v. Local Union No. 311, etc., et al., 156 O.S. 541. * * *

"This Court of Appeals has had occasion to pass on the right to picket for organizational purposes in the case of Bean v. Local Union No. 698, et al., 94 O. App. 361, wherein we said:

"'In the absence of a dispute between employer and employees, or between the union and the employer or employees, a labor union may not engage in organizational picketing, even though peaceful, for the purpose of bringing pressure to bear upon the employer to require his employees to join the union.'

"In the instant case the principal object and purpose of bannering the places of business of Fairlawn Meats, Inc., was for the purpose of forcing the great majority of employees to join the union. The resultant acts of the union to secure their object, such as coercion of the suppliers of meats, and picketing on property under control of Fairlawn Meats, was the

result of the failure of the union to secure the organization of the majority of the employees by peaceful means. This failure to convince the employees and the management was then followed by the picketing lines being established."

A situation, similar to that in the Fairlawn Meats Case, supra, and in the Bean case, supra, exists here. No dispute with the employees existed after the expiration of the contract, for even the three union members continued to work; and they testified they had no dispute with their employer. The market became a nonunion establishment by the statement of the employer, and the majority of the employees desired that no union represent them in their dealings with the employer. The purpose of the picket line was to coerce the employees into rejoining the union and to force the employer, against his will, to accept the union as the bargaining agent of the employees.

In such a situation, the picketing became unlawful under the public policy of this state.

A permanent injunction should be issued as was decreed in the trial court. The appellees will prepare the appropriate journal entry.

Injunction allowed as prayed for.

STEVENS, P. J., and DOYLE, J., concur

APPENDIX D

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT

CASE No. 4594

HARRY ANDERSON, ET AL., *Appellees*

v.

LOCAL UNION No. 698, RETAIL CLERKS' UNION, A.F.L., ET AL., *Appellants*

Journal Entry

STATE OF OHIO }
SUMMIT COUNTY } ss

This cause came on to be heard on appeal on questions of law and fact, and by agreement of counsel was submitted to the Court on the transcript of the testimony and evidence offered by the parties in the Common Pleas Court of Summit County, Ohio, as being all the evidence offered by the parties hereto on this appeal, together with the original papers filed in the said Common Pleas Court wherein Harry Anderson, Harold D. Vernon and W. A. Seiler, a partnership doing business as West Point Market, were plaintiffs, and Local Union No. 698 Retail Clerks' Union affiliated with the American Federation of Labor, and Retail Clerks' International Association, were defendants, and the briefs and arguments of counsel.

On consideration thereof, the Court finds that appellants were acting illegally in picketing appellees' place of business and such picketing was done for coercive purposes, all to appellees' damage and that a permanent injunction should issue in favor of appellees and against appellants.

It is therefore ordered, adjudged and decreed that appellants, Local Union No. 698, Retail Clerks' Union affiliated with the American Federation of Labor, and appellant, Retail Clerks' International Association, and each of them, are permanently restrained and enjoined from:

1. Interfering or threatening to interfere with ingress and egress of anyone to and from the premises of the appellees.
2. Interfering in any manner with the delivery of commodities necessary to the operation of appellees' business.
3. Picketing at or near the approaches to appellees' place of business, either on Market Street or Hawkins Avenue, Akron, Ohio.

Exceptions to appellants. Costs assessed at $ shall be paid by appellants.

FOR THE COURT:

Judge

Attorneys for Appellees

Attorneys for Appellants

APPENDIX E

IN THE SUPREME COURT OF OHIO

No. 34885

(Court of Appeals 4594)

HARRY ANDERSON, ET AL., *Appellees* (Plaintiffs)

v.

LOCAL UNION No. 698, RETAIL CLERKS' UNION, A.F.L., ET AL., *Appellants* (Defendants)

Journal No. 42, p. 156. Wednesday, October 17, 1956

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF SUMMIT COUNTY TO CERTIFY ITS RECORD:

It is ordered by the Court that this motion be, and the same hereby is, overruled.

APPENDIX F

IN THE SUPREME COURT OF OHIO

No. 34885

(Court of Appeals 4594)

HARRY ANDERSON, ET AL., *Appellees* (Plaintiffs)

v.

LOCAL UNION No. 698, RETAIL CLERKS' UNION, A.F.L., ET AL., *Appellants* (Defendants)

Journal No. 42, p. 157. Wednesday, October 17, 1956.

APPEAL FROM THE COURT OF APPEALS OF SUMMIT COUNTY:

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellees to dismiss the appeal, filed as of right herein and was argued by counsel.

On consideration whereof, it is ordered, and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellees recover from the appellants their costs herein expended, taxed at $.

ORDERED, that a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

ORDERED, that a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry."

APPENDIX G

IN THE SUPREME COURT OF OHIO

No. 34885

(Court of Appeals 4594)

HARRY ANDERSON, ET AL., *Appellees* (Plaintiffs)

v.

LOCAL UNION No. 698, RETAIL CLERKS' UNION, A.F.L., ET AL., *Appellants* (Defendants)

Journal No. 42, p. 167. Wednesday, October 31, 1956.

REHEARING DOCKET:

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

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In the Supreme Court of the United States

OCTOBER TERM 1956.

No. 837.

LOCAL UNION NO. 698, RETAIL CLERK'S UNION,
Affiliated with the American Federation of Labor,

Petitioner,

vs.

HARRY ANDERSON, HAROLD D. VERNON
and W. A. SEILER,
a Partnership, Doing Business as
West Point Market,

Respondent.

BRIEF OF RESPONDENT

In Opposition to Petition for a Writ of Certiorari to the Supreme Court of Ohio.

STATEMENT OF FACTS.

The Respondent herein will be referred to as plaintiff-employer, and the Petitioner as defendant-union.

The Plaintiff, a partnership, operating as the West Point Market at 1711 West Market Street, Akron, Ohio since 1940 (R. 1) conducted a business of retailing groceries and meats, employing nine in the grocery department and three in the meat department (R. 2).

The defendant is a labor union known as Local No. 698, Retail Clerks' Union, affiliated with the American Federation of Labor and of a parent union known as the Retail Clerks International Association, A.F.L.-C.I.O.

It was stipulated at the hearing for a temporary injunction that the plaintiff's business in no way affects in-

terstate commerce and defendant makkes no claim that any federal statute applies (Defendantt's Brief, page 3).

The plaintiff in its petition allegedd the existence of an unlawful strike and sought an injunctition against picketing and against interference with its buusiness. The Judge hearing the testimony made "findings annd rulings of law," pursuant to which a decree of temporaary injunction was entered. Defendant offered no additioonal testimony on final hearing in the Common Pleas Coourt and stipulated that "on the merits, on the application of the plaintiff for a final injunction as prayed for in thee petition, the evidence offered and introduced in the heearing on the application for a temporary injunction, beforre Judge Colopy of this Court heretofore, may be offered and considered as being all the evidence offered by the paarties hereto on the hearing on the merits" (Transcript, pages 1 and 2.)

The defendant admitted and stipulated that the purpose of the strike here is—

> "to compel or to induce a negotiatioon of a contract between employer and union" (R. 860), and,
>
> "by cutting off delivery of supplies tto the store to bring the employer around to negotiatee a contract." (R. 79.)

and the Court found (R. 84) "damaage both past and prospective, * * * the effect of the pickketing has been the proximate result of it and has produceed some injury and damage," and, "the purpose of throwiing up a picket line is to put some coercive effect there" ((R. 84), and that it is unlawful in the State of Ohio "to coerce a person to negotiate a contract," "to coerce, to prressure in signing a contract." (R. 88).

The defendant claims that on NNovember 22, 1954, when it begun picketing it representeed three employees

in the grocery department. Employees in the meat department were not union members. The employer and Union had entered into a labor contract in behalf of the grocery department employees, which expired October 30, 1954. Prior to the expiration date, employees expressed a dissatisfaction of the Union to the employer, and he presented to the employees of the grocery department a statement prepared at their request reading as follows:

> "The undersigned has withdrawn membership in Local No. 698, Retail Clerks Union, and all its affiliates, including Retail Clerks International Association and Retail Clerk's District Council No. 7, affiliated with the American Federation as of October 30, 1954. I hereby request you as my employer to discontinue deduction of union dues or funds in any form pertaining to the Union from my pay."

Six of the nine in the grocery department signed the foregoing. Prior to October 30, dues were deducted in accordance with a check-off provision and employee authorization. The Union claims this act of the employer is "an unfair labor practice," but says that "Ohio, as a matter of public policy, may choose as it wishes to allow any kind of employer anti-union conduct, which other jurisdictions, both federal and state, may be violative of any code of fair play" (Brief, p. 12). This thrust at Ohio courts and Ohio public policy is both unjustified and untrue as shown by the testimony of the Union's own witnesses. The three employees who did not sign testified under oath: "He (Mr. Vernon) said he would like for me to sign it but I didn't sign it and was not discharged." After she refused to sign she continued to work from August 30th to November 22nd continuously (R. 51 and 52). This witness *did not* vote for a strike (R. 53), and although she started to go to work on November 22nd, she did not go

to work because when "I came out and when I saw the pickets were there, I wasn't going to cross the pickets," and although before she saw the pickets she intended to report for work she refused to cross the picket line when she saw them (R. 51). The second witness called by the Union, Marcella Campbell, testified she left her employment November 22nd "because of the pickets" (R. 54). Counsel for the Union stipulated it wasn't the proper thing for a union member to cross a picket line (R. 57) and that "it is more or less like the Harvard Boys sitting on the Yale Cheering Section." She testified further "it was only when she saw the pickets that she changed her mind and refused to go to work (R. 58); that none of the West Point Market employees voted a strike (R. 58), and that Business Agent Radebaugh said he and not the employees would call a strike (R. 59); that neither she nor any of the other employees told Mr. Radebaugh they wanted pickets (R. 60). They had no complaint about wages or working conditions, and this strike was called by the Business Agent and not by any of the employees of the store (R. 61).

The Union next called Aves Deskins, the third girl who didn't sign. She said she didn't cross the picket line because "I think I would be turning against the people my husband works with" (R. 65). Although she did not sign, she was not discharged (R. 66). She did not vote for a strike nor for the picketing (R. 66) and neither she nor any other employee had anything to do with the placing of pickets at West Point (R. 67.)

The testimony of the three employees utterly fails to bear out or support the Union's claim of coercion on the employer's part, but establishes clearly the union's lack of fair play in representing the employees involved. There is not a single word of testimony supporting the claim of

the Union's loss of majority because of the employer's act or conduct and nothing from which an honest inference might be drawn supporting the Union's mythical claim.

Both trial Courts, which in this instance included the Court of Appeals, ruled that the strike was for an illegal purpose within the law of Ohio, and made findings requisite to issuing an injunction enjoining the defendants from,

(1) Interfering or threatening to interfere, in any manner, with ingress and egress of anyone to and from the premises of the plaintiffs.

(2) Interfering in any manner with the delivery of commodities necessary to the operation of plaintiff's business.

(3) Picketing at or near the approaches to plaintiff's place of business, either on Market Street or Hawkins Avenue.

On appeal by the Union to the Ohio Supreme Court, the appeal was dismissed. It is to be noted that the decision in each Court, Common Pleas, Court of Appeals and Supreme Court, was unanimous in each instance.

It is admitted Ohio is one of the 40 states of the Union, which has not seen fit to pass a labor relations statute. It is not admitted and the weight of the evidence is contrary to the conclusion posed in the Union's first question that the employer destroyed the Union's majority.

DISCUSSION OF THE APPLICABLE LAW.

Just a short time before the Ohio Supreme Court refused to review the case at bar, it had on October 25, 1955, heard the case of *Chucules vs. Royalty,* 164 Ohio St. 214; 129 N. E. (2) 8, 23. Relative to the Fourteenth Amendment, in sustaining the lower court's order of injunction, the Ohio Supreme Court in Syllabus 4 said:

> "The Fourteenth Amendment to the Federal Constitution does not require a state to prohibit voluntary acquiescence in the demands of a union in order that such state may prohibit the Union from exerting pressure by picketing to secure submission to such demands."

In arriving at this statement of the law of Ohio, the Ohio Supreme Court gave thoughtful consideration to the expression of the United States Supreme Court in *International Brotherhood, etc. vs. Hanke,* 339 U. S. 470; 70 Sup. Ct. 773, where the Court said, at page 778:

> "Nor does the Fourteenth Amendment require prohibition by Washington also of voluntary acquiescence in the demands of the union in order that it may choose to prohibit the right to secure submission through picketing. In abstaining from interference with such voluntary agreements a State may rely on self-interest. In any event it is not for this Court to question a State's judgment in regulating only where an evil seems to be most conspicuous."

This Court said relative to the *Swing* case, *et al.,* concerning which there has been some misunderstanding, both in the Courts and among lawyers "that which was decided (p. 778) in Swing, Wohl and Angelos, does not preclude us from upholding Washington's power to make the choice of policy she has here made. In those cases we held only that a State could not prescribe picketing by setting arti-

ficial bounds unreal in the light of modern circumstances to what constitutes an industrial relationship or a labor dispute. When an injunction of a State Court comes before us it comes not as an independent collocation of words. It is defined and confined by the opinion of the State Court."

Hughes, Thornhill, Senn, Swing and *Wisc. E. R. B.* were all considered by this Court in *Hanke.*

We must recount here the United States Supreme Court quoting the Supreme Court of Washington at page 777 as follows:

> "From this fact the conclusion seems irresistible that the union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of the community as a whole, to the end that little business men and property owners shall be free from dictation as to business policy by an outside group having but a small and indirect interest in such policy."

For the purpose of considering the deceptive and opaque elements in problems of policy this Court says they must be recognized as being "within the domain of a State's public policy," and "the clash of fact and opinion should be resolved by the democratic process and not by the judicial sword. Invalidation here would mean denial of power to the Congress as well as to the forty-eight states."

The position of Ohio and its policy on picketing and injunctions do not run afoul of the policy set in various other states. For example, the great State of Massachusetts, through its Supreme Court, on June 26, 1947 said in *Colonial Press, Inc. vs. Ellis et al.*, 74 N. E. (2d) 1 (p. 1):

"The strengthening of Union for future contests is not sufficient justification for strike, as respects right to injunction."

"A strike for maintenance of union membership agreement was designed to allow augmented strength to union in potential future controversy and hence was a strike for illegal purpose and would be enjoined."

"The federal constitutional guarantee of free speech does not prohibit injunction of picketing in support of unlawful objective."

The Massachusetts case is in many respects parallel to the Ohio case and discusses *Senn, Swing, Meadowmoor, Ritters, Wohl, et al.*, and finds that none are in conflict. Consequently it follows its earlier pronouncement in *Simon vs. Schwachman*, 18 N. E. (2) 1; 301 Mass. 573, where there is not and never has been a dispute between the plaintiff and his employees.

The State of New York has taken a similar position in *Judy Ann Ice Cream Corp. vs. Hefferman*, 132 N. Y. S. (2) 456, where a majority of the employees were not in favor of the union and the union was not asking recognition because it did not represent a majority of the employees, but the union picketed the employer's place of business in order to prevent employer from obtaining supplies so that employer would force its employees into the union, there was no "labor dispute" involved within the meaning of Civil Practice Act providing that no injunction shall be issued in a "labor dispute except under special circumstances."

Nor is the position of the Courts of Ohio in the case at bar contrary to the Courts of New Jersey. The basic right of the plaintiffs to be protected in their business and property is effectively expounded in *Louis Kamm, Inc. vs.*

Flink, 113 N. J. L. 582, later applied by the New Jersey Supreme Court in 1951, in the picketing case of *Outdoor Sports Corp. vs. A. F. of L., etc.,* 6 N. J. 217, at page 229. We quote:

> "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition, but he has a right to be free from malicious and wanton interference, disturbance and annoyance."
>
> "The conduct and action of the defendants and their threats of interference with the business of the respondent clearly come within these principles. The injury threatened and complained of is an irreparable injury which cannot be adequately compensated in damages and therefore an interlocutory injunction should properly have issued under the circumstances."

On page 231 the Court very properly said—citing *Meadowmoor, Gibony, Hughes, Hanke* and *Gazzam:*

> "The policy of a state may rely on the free play of conflicting interest and leave conduct unregulated. On the other hand, a state may deem it a wiser policy to regulate. Regulation may take the form of legislation, judicial decision or the common law. Whatever form the regulation takes it is to be obeyed and the State is left the choice of method and can decide between placing confidence in an injunction proceeding rather than to rely exclusively on a policeman's club."

Without placing further burden upon the Court in our citing the position of many other states which is in full accord with that taken by the Courts of Ohio, we respectfully conclude *Pappas vs. Stacey,* 116 A. (2) 497, decided by the Supreme Court of Maine May 31, 1955, and the appeal therefrom dismissed by the United States Supreme

Court in 350 U. S. 370; 100 L. ed. 770; 76 S. Ct. 117; is conclusive of the appeal in the case at bar and certiorari should be denied. As reported in 116 A. (2) 497, the agreed statement of facts in full are:

1. (That) the said Plaintiff is the operator and owner of a certain restaurant or eating establishment known as and called Theodore's Lobster House, located at 123 Commercial St. in said Portland.
2. That, the said defendants and their agents and servants have been and are conducting picketing at the place of business of your plaintiff.
3. That said picketing has been at all times peaceful picketing.
4. At least three employees of the Plaintiff are on strike, two of whom have been participating in the picketing and the third of whom has been present at the site of the picketing. All three are members of the union, local No. 390 of the Hotel and Restaurant Employees and Bartenders International Union.
5. The defendants and the three employees aforesaid who are on strike have been conducting the picketing for the sole purpose of seeking to organize other employees of the plaintiff, ultimately to have plaintiff enter into collective bargaining and negotiations with the Union, this being done as a preliminary for attempting to organize restaurant employees in other establishments throughout the State of Maine.
6. The Plaintiff employs on an average thirty persons who would properly be subject to organization and of this thirty at least five are sporadic or transient employees.
7. The business of the plaintiff is a lawful business and if the picketing is illegal, the plaintiff has been suffering and will continue to suffer damages in

the conduct of his business, which is irreparable and for which there is no adequate remedy at law."

In the Maine case, as in the case at bar, "there are no grievances existing between the plaintiff and the employees, including the three on strike, relating to wages, hours, and conditions of employment * * * the grievance (if it may be called such), of the defendants, is not with the plaintiff, but with the employees for not joining Local 390."

"Whether the labor-management relationship, ultimately * * * shall take the form of a closed, union, preferential union, or non-union shop, or any other type, is not the point at issue." (p. 499.)

"The picketing in support of such strike, although peaceful, is likewise unlawful and may be enjoined." (p. 499.)

"In this instance the purpose of the strike necessarily is to compel the employer to bring pressure upon the employees to join Local 390. For what other purpose under the circumstances of this case are the employees on strike?" (p. 499.)

"We do not base our decision, however, solely upon the fact of an unlawful strike. Treating the case as if only picketing were involved, we reach the same result." (p. 500.)

"An obvious purpose of picketing—to cause economic loss to the business during non compliance by the employees with the requests of the union."

The restraint of peaceful picketing in the Maine case did not abridge the right of free speech as guaranteed by the Constitution. The U. S. Supreme Court dismissed the appeal, 350 U. S. 870.

CONCLUSION.

Under the facts and circumstances of the case at bar found by the Courts of Ohio, the strike and picketing of the defendants were illegal, for an illegal purpose and were causing plaintiff irreparable damage. The injunction which was granted did not deprive the defendants of any rights and their conduct was not protected by the Constitutional provisions regarding free speech. Jurisdiction and certiorari should be denied.

Respectfully submitted,

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